

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CALVIN LETROY HUNTER §
v. § Cause # 4:10-cv-00778
RICK THALER §

SECOND MOTION FOR ADMINISTRATIVE STAY

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner Hunter brings this Request for Administrative Stay by and through his attorney of record. In support thereof he would respectfully show this Honorable Court the following:

I.

Administrative stays or abeyances are an appropriate remedy and within the discretion of the district courts. *Brewer v. Johnson*, 139 F.3d 491, 493 (5th Cir. 1998), *Rhines v. Weber*, 544 US 269 Supreme Court 2005). The Court of Criminal Appeals has recognized this and in the decision of *Ex Parte Soffar*, (Tex. Crim. App.) 143 S.W. 3d 804 issued on February 11, 2004, it determined it *would* consider properly presented subsequent writs if the federal district court had granted a stay of the federal proceedings.

II.

In addition to the reasons stated previously, the requester respectfully asks that based upon the new agreed suspension order against Dr. Denkowski (see attached) that it is appropriate for Mr. Hunter to be permitted to return to state court to relitigate the issue of his mental retardation.

Dr. Denkowski, the State's primary witness in the trial of Calvin Hunter, has now been officially reprimanded by the Texas Medical Board. His methods for determining whether an individual was retarded have been found to be medically unsound and they

have been rejected by the Texas mental health establishment. This means the jury received false and misleading material sponsored by the State, information critical to the jury's determination on both the *Atkins v. Virginia* issue, and the ultimate decision on death. Since the State essentially sponsored false expert testimony, it is a violation of due process under the Fourteenth Amendment and the Eighth Amendment's proscription against cruel or unusual punishment to have such a death sentence stand. This Honorable Court should grant this motion.

FOR THESE REASONS, the Petitioner hereby requests an administrative stay so that he may return to state court and then return with a corrected petition to this Honorable Court.

The Petitioner further asks that this Court grant a reasonable time from the issuance of its order granting the stay [60 days is requested] to present this claim to the State of Texas, and that once this issue is decided in state court, it grant a time period of 60 days to return, if required, to federal court. In the alternative the Petitioner asks it permit a modified petition alleging any new related claims and a rejection of any procedural default in this regard, or that the Court set this matter for argument and a hearing.

Respectfully submitted,

s/_____
Patrick F. McCann
TBA 00792680
909 Texas Ave
Houston, Texas 77002
713-223-3805
713-226-8097 Fax

CERTIFICATE OF CONFERENCE

I attempted to reach the Asst. AG on this matter for the State via phone and but was not able to, but I believe he would be unopposed to this motion.

s/_____
Patrick F. McCann

CERTIFICATE OF SERVICE

I certify that true and correct copy of the foregoing was delivered to the Office of the Attorney General, P.O. Box, Capitol Station, Austin, Texas 78711, via first class mail on April 29, 2011.

s/_____
Patrick F. McCann

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ORDER

On this day, the _____ of _____, 2011, the Court, having reviewed the arguments by counsel and the evidence and law presented, is of the opinion the Motion for Stay should be:

GRANTED

AND HEREBY ORDERS that the Petitioner is granted a stay of these proceedings in order to go back into state within a reasonable time from this order, and present his claims to state court for a determination on the merits. Counsel shall inform this Court whenever such claims have been ruled upon, and shall have 60 days from that date to re-enter district court with the appropriate filing.

SO ORDERED.

PRESIDING JUDGE

Date